

[Service Date December 17, 2009]

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper	)	DOCKET TV-091498
Carrier Classification of, and Complaint for)	
Penalties against:	)	ORDER 01
)	
BOUBACAR ZIDA d/b/a ZIDA LABOR	)	ORDER INSTITUTING SPECIAL
and/or ZIDA LABOR SERVICES	)	PROCEEDING; COMPLAINT
	)	SEEKING TO IMPOSE
	)	PENALTIES;
	)	and
	)	NOTICE OF HEARING
	)	(Set for January 15, 2010,
_____	)	At 11:00 a.m.)

INTRODUCTION

- 1 The Washington Utilities and Transportation Commission (Commission), pursuant to RCW 81.04.510, institutes this special proceeding on its own motion to determine whether Boubacar Zida, d/b/a Zida Labor and Zida Labor Services (Zida), has engaged, and is engaging, in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80, as amended by the Laws of 2009, ch. 94, § 4.
- 2 The Commission has information from which it believes and therefore alleges that Zida has advertised, solicited, offered, or entered into one or more agreements to transport household goods within the state of Washington without first having obtained a household goods carrier permit from the Commission. The information demonstrates a continuing pattern of behavior over an extended period of time, including the present time.
- 3 Pursuant to RCW 81.04.510, upon proof of these allegations, the Commission is authorized to issue an order requiring Zida to cease and desist activities subject to regulation under Title 81 RCW. In addition, RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting forth any act or omission by Zida that violates any law, or any order or rule of the Commission. The Commission may impose financial penalties of up to \$5,000 for each violation shown.

- 4 At the hearing in this special proceeding that will be conducted pursuant to Part IV of the Administrative Procedure Act (APA), RCW 34.05, of which notice is given here, the Commission will also consider its Complaint against Zida alleging various violations of law as specified below and decide whether Zida should be penalized.

ORDER AND NOTICE OF HEARING

- 5 The Commission has jurisdiction to institute a special proceeding to determine whether Zida is conducting business requiring operating authority, or has performed or is performing any act requiring Commission approval without securing such approval pursuant to RCW 80.01.040, RCW 81.80.070 and RCW 81.04.510. In addition to the foregoing statutes, this matter involves Title 81 RCW, including but not limited to RCW 81.01.010; RCW 81.04.020; RCW 81.80.070, and Laws of 2009, chapter 94. This matter also involves the administrative rules set forth in WAC 480-15 and WAC 480-07.
- 6 **IT IS HEREBY ORDERED That Zida appear before the Commission in this special proceeding conducted under the authority of RCW 81.04.510 at 11:00 a.m. on January 15, 2010, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington,** to give testimony and evidence under oath as to its operations. Zida shall appear at the time and place set forth above unless the Executive Director and Secretary of the Commission, by notice of hearing, specifies a different time and place. This is ordered pursuant to the subpoena powers granted in RCW 34.05.446, RCW 80.01.060(1), and RCW 81.04.510.
- 7 **IT IS FURTHER ORDERED** that at the hearing in this special proceeding the burden of proving that the alleged operations are not subject to the provisions of Title 81 RCW shall be upon Zida, as provided by RCW 81.04.510.
- 8 **NOTICE IS FURTHER GIVEN THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET BY THIS NOTICE, OR ANY OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH RCW 34.05.440 AND WAC 480-07-450.**

- 9 If a limited English-speaking or hearing-impaired party needs an interpreter, a form is attached to this notice to be filled out and returned as indicated, so that a qualified interpreter may be appointed at no cost to the party or witness.
- 10 The names and mailing addresses of all parties and their known representatives are shown as follows:

Carrier: Mr. Boubacar Zida
d/b/a Zida Labor/Zida Labor Services
4525 164th Street SW
Apartment DD-101
Lynnwood, WA 98087

Representative: Unknown

Commission: Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Jennifer Cameron-Rulkowski
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1186

COMPLAINT SEEKING PENALTIES

PARTIES

- 11 Complainant, the Washington Utilities and Transportation Commission is an agency of the State of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including household goods carriers, under the provisions of Title 81 RCW.
- 12 Respondent, “Zida Labor” or “Zida Labor Services,” owned by Boubacar Zida, is a sole proprietorship that does business in the state of Washington.

JURISDICTION

- 13 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, RCW 80.04.110, RCW 81.04.160, RCW 81.04.460, RCW 81.80, and Laws of 2009, ch. 94.

BACKGROUND

- 14 For approximately eight months in 2008, Zida held temporary authority from the Commission to transport household goods within the state of Washington. After notice and a suspension period, the Commission canceled Zida’s temporary permit on November 4, 2008, for failure to provide proof of insurance.¹
- 15 Subsequent to the cancellation of Zida’s temporary authority, a Commission Staff Compliance Investigator monitored the company’s activities for a period of approximately ten months. According to the Compliance Investigator’s Declaration, presented to the undersigned administrative law judge² under penalty of perjury, the following facts establish probable cause for the Commission to complain against the activities of Zida and to seek penalties in accordance with applicable law.

¹ Docket TV-081757, Regarding suspension of Household Goods Permit and provisional operating authority for failure of holder to file proof of liability and property damage insurance covering equipment, Order Suspending Permit No. THG-63175 Boubacar Zida, served October 2, 2008.

² Administrative law judges appointed by the Commission are empowered, among other things, to “make findings of probable cause and issue complaints in the name of the commission.” RCW 80.01.060(1).

- 16 On November 19, 2008, Zida posted an advertisement for household goods moving services on the Internet at www.craigslist.org.
- 17 In December 2008 and January 2009 Commission Staff contacted Zida. On both occasions, Commission Staff understood at the conclusion of the conversation that Zida would be filing a household goods carrier permit application. No application was ever filed.
- 18 On March 20, 2009, Zida posted another advertisement for household goods moving services on the Internet at www.craigslist.org. When contacted by Commission Staff that same day, Zida committed again to filing an application for a household goods carrier permit. By summer 2009, the Commission still had not received an application from Zida.
- 19 On July 15, 2009, the Commission sent a letter to Zida informing Zida about a new law, Laws of 2009, ch. 94, effective July 26, 2009, allowing the Commission to seek penalties and other enforcement against illegal carriers for advertising to transport household goods. In this letter, the Commission stated that Zida must cease advertising as a household goods mover and, to avoid enforcement action, Zida must file a household goods carrier permit application by August 15, 2009.
- 20 The Commission has not received a household goods carrier permit application from Zida, and Zida has continued to advertise household goods moving services in various formats on the Internet.
- 21 Specifically, the Commission has evidence that Zida is advertising on the Internet to transport household goods within the state of Washington and that advertisements for Zida's moving services have appeared after July 26, 2009, at www.craigslist.org, www.umovers.com, www.listown.com, and on Zida's own Web site at www.zidalaborservices.com.

APPLICABLE LAW AND REGULATION

- 22 Under state law, the definition of "household goods carrier" includes a person who "advertises, solicits, offers, or enters into an agreement to transport household goods" within the state of Washington. *Laws of 2009, ch. 94, § 1 (11)*.

- 23 The term “person” can mean a firm as well as an individual. *RCW 81.04.010(6)*. Specifically included in this term are companies, corporations, and partnerships. *WAC 480-15-020*.
- 24 The Commission defines household goods as “the personal effects and property used, or to be used, in a residence” in the context of transportation from one residence to another, or to a storage facility. *WAC 480-15-020*.
- 25 Household goods carriers are common carriers. *RCW 81.04.010(11)*. For the purposes of Title 81 RCW, every common carrier is a public service company. *RCW 81.04.010*.
- 26 It is illegal to engage in business as a household goods carrier within the state of Washington without first obtaining a household goods carrier permit from the Commission. *Laws of 2009, ch. 94, § 4(1)*.
- 27 Any person who engages in business as a household goods carrier in the state of Washington without the required permit is subject to a penalty of up to five thousand dollars per violation. *Laws of 2009, ch. 94, § 4(4)*. If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation. *Laws of 2009, ch. 94, § 4(4)(a)*.
- 28 When deciding the amount of the penalty to be ordered for engaging in business as a household goods carrier without a household goods carrier permit, the Commission must consider (1) the carrier’s willingness to comply with the requirements of RCW 81.80.070 and the Commission’s household goods carrier rules; and (2) the carrier’s history of compliance with the provisions of section 4 of Laws of 2009, ch. 94. *Laws of 2009, ch. 94, § 4(b)*.
- 29 The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission. *RCW 81.04.110*.

COMPLAINT

- 30 The Commission, through its Staff, re-alleges the allegations contained in paragraphs 11 through 29 above.

- 31 Zida has violated Laws of 2009, ch. 94, § 4(1) by advertising on the Internet to transport household goods without first having obtained a household goods carrier permit from the Commission. Content has appeared after July 26, 2009, on the Internet at www.craigslist.org, www.umovers.com, www.listown.com, and at Zida's own Web site, www.zidalaborservices.com, that constitutes multiple distinct advertisements for the transportation of household goods by Zida.

REQUEST FOR RELIEF

- 32 Staff requests that the Commission, pursuant to its authority under Laws of 2009, ch. 94, § 4(4), assess penalties of five thousand dollars against Zida for each advertisement that constitutes a separate violation of Laws of 2009, ch. 94, § 4(1).

PROBABLE CAUSE

- 33 Based on a review of the Declaration of the Commission Compliance Investigator assigned to this matter, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

NOTICE OF HEARING

- 34 **THE COMMISSION GIVES NOTICE THAT it will conduct a hearing concerning this Complaint concurrently with the special proceeding noticed above, which will commence at 11:00 a.m. on January 15, 2010, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** Administrative Law Judge Ann E. Rendahl, from the Utilities and Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, is designated to preside at the hearing of these matters.

DATED at Olympia, Washington, and effective December 16, 2009.

DENNIS J MOSS
Senior Review Judge
Administrative Law Division

Inquiries should be addressed to:

Executive Director and Secretary
Washington Utilities and
Transportation Commission
Richard Hemstad Building
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: David W. Danner, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes)_____ (No)_____

Do you need a certified sign language interpreter?

Visual_____ Tactile_____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (____)_____